

PUBLIC UTILITIES COMMISSION

505 VAN NESS AVENUE
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July 14, 2004

Marlene H. Dortch, Secretary
Federal Communications Commission
Office of the Secretary
445 12th Street, SW
Washington, DC 20554

Re: NASUCA Petition for Declaratory Ruling Regarding Truth-In-Billing and Billing Format, CG Docket No. 04-208

Dear Ms. Dortch:

The California Public Utilities Commission (CPUC) respectfully requests that the enclosed document entitled "**COMMENTS OF THE CALIFORNIA PUBLIC UTILITIES COMMISSION AND THE PEOPLE OF THE STATE OF CALIFORNIA ON NATIONAL ASSOCIATION OF STATE UTILITY CONSUMER ADVOCATES PETITION FOR DECLARATORY RULING REGARDING TRUTH-IN-BILLING AND BILLING FORMAT**" be accepted for electronic filing in the above docket.

Thank you for your cooperation and assistance.

Sincerely,

/s/ Laura E. Gasser
Legal Division

Enclosure

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

In the matter of:

National Association of State Utility
Consumer Advocates Petition for
Declaratory Ruling Regarding Truth-In-
Billing and Billing Format

CG Docket No. 04-208

**COMMENTS OF THE CALIFORNIA PUBLIC UTILITIES COMMISSION AND
THE PEOPLE OF THE STATE OF CALIFORNIA
ON NATIONAL ASSOCIATION OF STATE UTILITY CONSUMER ADVOCATES
PETITION FOR DECLARATORY RULING
REGARDING TRUTH-IN-BILLING AND BILLING FORMAT**

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July 14, 2004

TABLE OF CONTENTS

I.	SUMMARY.....	2
II.	DISCUSSION.....	2
	A. CALIFORNIA SUPPORTS TRUTH-IN-BILLING, INCLUDING THE ACCURACY AND CLARITY OF SURCHARGES, TAXES, AND FEES.....	2
	B. CPUC STAFF’S FINDINGS REGARDING CARRIERS' BILLING PRACTICES CONFIRMS THE EXISTENCE OF ABUSES NASUCA DESCRIBES IN ITS PETITION.....	5
III.	CONCLUSION.....	7

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The California Public Utilities Commission and the People of the State of California (CPUC or California) hereby file these comments in response to the Petition for Declaratory Ruling (Petition) of the National Association of State Utility Consumer Advocates (NASUCA), filed on March 30, 2004. In its Petition, NASUCA asks the Federal Communications Commission (the Commission) to prohibit wire-line and wireless telecommunications carriers from “imposing monthly line-item charges, surcharges or other fees on customers’ bills unless such charges have been expressly mandated by a regulatory agency.” Petition at 1. NASUCA opposes carriers’ practice of “imposing ever-increasing line items, surcharges and fees on customers, while at the same time advertising low monthly and per minute rates for the telecommunications services offered.” Petition at 38. NASUCA argues that (1) monthly line items violate the Commission’s 1999 order regarding truth-in-billing and/or sections 201 and

202 of the Communications Act of 1934; and (2) the use of line item charges are misleading and deceptive, bear no demonstrable relationship to the regulatory costs they purport to recover, and constitute unreasonable and unjust carrier practices and charges. Petition at 27-39, 42.

I. SUMMARY

The CPUC agrees with NASUCA that government regulation is necessary to ensure that carriers' bills to consumers – including those parts of the bills showing surcharges and fees -- are accurate and clear. To that end, the CPUC has adopted a consumer protection rule requiring carriers to itemize in a separately-labeled “Government Fees and Taxes” section of the monthly bill all government-mandated taxes, surcharges, and fees required to be collected from subscribers and remitted to government. The CPUC’s intent in adopting this rule is to make clear to subscribers which of the charges carriers place on their bills are taxes, surcharges, and fees carriers have been *ordered* to collect and remit to government, and which are aimed at recovering carriers’ costs of doing business, including costs of meeting regulatory requirements that carriers have discretion to reflect in their rates. The CPUC encourages the Commission to adopt a similar rule.

II. DISCUSSION

A. California Supports Truth-In-Billing, Including The Accuracy And Clarity of Surcharges, Taxes, and Fees

The CPUC is strongly in favor of truth-in-billing regulation and its ability to promote competition by ensuring the charges imposed on consumers are just and reasonable. The CPUC recognizes not only the opportunity for carrier abuse but also a history of actual abuse that, left uncorrected, has the potential to distort competition by

forcing carriers to match the abusive practices of other carriers or risk being disadvantaged in the marketplace.

Because of the continued need to protect consumers from such abuse during the shift to a more competitive telecommunications marketplace, the CPUC instituted a rulemaking proceeding in early 2000 to consider the revision of existing consumer protection rules and/or the establishment of new rules applicable to regulated telecommunications utilities. In May 2004, the CPUC approved rules governing telecommunications consumer protection, including a consumers' Bill of Rights, Consumer Protection Rules all carriers must follow to protect those rights, Rules Governing Billing of Non-communications-Related Charges, and Rules Governing Slamming Complaints. D.04-05-057, *Interim Decision Issuing General Order 168, Rules Governing Telecommunications Consumer Protection*, issued in Rulemaking (R.)00-02-004 (Bill of Rights Decision). In doing so, the CPUC noted that

[i]n a perfect world, all telecommunications carriers would operate honorably and never seek unfair advantage at the expense of residential and business customers. Unfortunately perfection in competition and conduct remains only an ideal.

Bill of Rights Decision at 10. Indeed, through comments and public participation hearings, consumers expressed their “frustration with the present state of consumer protection in the regulated telecommunications industry” and their “approval of the [CPUC’s] assuming a stronger consumer protection role.” Bill of Rights Decision at 149-150, Finding of Fact 2. Based on this consumer input and staff recommendations, the CPUC found the “ongoing shift to a more competitive telecommunications marketplace increases consumers’ vulnerability and challenges the [CPUC] to step up its

efforts to protect them,” including the development of updated consumer protection rules.

Bill of Rights Decision at 149, Finding of Fact 1.

Consumer Protection Rule 6 deals with billing issues and “is a series of requirements to ensure that subscribers’ bills are complete, accurate and understandable.”

Bill of Rights Decision at 61.¹ Rule 6(g) states:

All mandated government taxes, surcharges and fees required to be collected from subscribers and to be remitted to federal, state or local governments shall be listed in a separate section of the telephone bill entitled “Government Fees and Taxes,” and all such charges shall be separately itemized. This section of the bill shall not include any charges for which the carrier is not required to remit to the government the entire amount collected from customers. Carriers shall not label or describe non-government fees or charges in a way that could mislead subscribers to believe those charges are remitted to the government.

The intent of the rule

is to make clear to subscribers which of the charges carriers place on their bills are taxes surcharges and fees carriers have been *ordered* to collect and remit to government, and which are aimed at recovering carriers’ costs of doing business, including costs of meeting regulatory requirements that carriers have discretion to reflect in their rates.

Bill of Rights Decision at 66 (emphasis in original).

The Comment to Rule 6 clarifies that the “federal subscriber line and number portability charges are not remitted to government, and the federal USF, and property and

¹ The CPUC noted the Commission explicitly allowed the states to adopt and enforce their own truth-in-billing requirements as long as they are consistent with the FCC’s. Bill of Rights Decision at 62; 47 CFR § 64.2400(c) (2004).

income taxes are not required to be collected from subscribers, therefore, it is appropriate to exclude these from the ‘Government Fees and Taxes’ portion of the bill.” The decision further explains that “[d]iscretionary charges not remitted to government are carrier charges that must be quoted in [the carriers’] service rate disclosures.” Bill of Rights Decision at 67.

By adopting this rule, the CPUC has taken steps to protect consumers against carrier billing abuse regarding unclear and confusing surcharges, taxes, and fees on monthly bills. A rule at the federal level would greatly benefit those consumers who live in states that have not take these consumer protection steps.²

B. CPUC Staff’s Findings Regarding Carriers’ Billing Practices Confirms The Existence of Abuses NASUCA Describes In Its Petition

CPUC staff research into and investigation of the carrier billing practices at issue support the data NASUCA collected and presented in its Petition. *See* Petition at 10-22.

For example, in the February 2000 *Consumer Protections for a Competitive*

Telecommunications Industry: Telecommunications Division Staff Report and

Recommendations (TD Staff Report), the Telecommunications Division listed what it

saw as “deficiencies ” in California’s telecommunications consumer protection efforts at

that time. TD Staff Report, <http://www.cpuc.ca.gov/PUBLISHED/REPORT/3012.htm>, at 8.³

² At least one other state has acted to prevent this type of misleading billing practice. In December 2002, the Missouri Attorney General filed suit against Sprint PCS and Nextel, alleging that the companies’ labeling of non-government mandated surcharges on customer bills was deceptive and misleading to customers under an applicable Missouri statute. Petition for Injunction and Other Relief, State *ex rel.* Nixon v. Nextel West Corp., No. 024—02609A, MO Circuit Court of the City of St. Louis (Dec. 5, 2002). According to the terms of the 2003 settlement agreements, Sprint PCS and Nextel agreed to clearly label their surcharges as government-mandated or not.

³ *See also* Order Instituting Rulemaking on the Commission’s Own Motion To Establish Consumer Rights and
(footnote continued to the next page)

With regard to billing practices, TD reported that “[c]ustomers are confused by the complexity of telecommunications billings” and “[c]arriers are allowed to place discretionary charges in the regulated surcharge or fee area of the bill, which implies that the charge is mandated by a regulatory authority.” TD Staff Report at 8-9.

More recently, staff from the CPUC’s Consumer Protection and Safety Division (CPSD) prepared a 2003 resolution before the National Association of Regulatory Utility Commissioners (NARUC) (1) requiring wireless carriers to fully disclose service charges and fees, including government-mandated charges, imposed on customers in addition to the monthly service charge and (2) encouraging state commissions to resolve consumers’ wireless service quality issues, including billing problems. Resolution Concerning Consumer Protection and Service Quality Issues with Wireless Telecommunications Services, http://www.naruc.org/associations/1773/files/consumer_protection.pdf. The full NARUC board approved this resolution.

In a White Paper accompanying the NARUC resolution, CPSD noted the same carrier practices NASUCA lists in its Petition in section II.D., namely (1) carrier-imposed “recovery” charges and fees that “go directly to the carrier’s bottom line” while consumers continue to choose services based on advertised rates, not on the total cost of service including the additional charges; and (2) wireless carriers’ failure to adequately

(footnote continued from previous page)

Consumer Protection Rights and Consumer Protection Rules Applicable to All Telecommunications Utilities, Feb. 3, 2000, at 3.

disclose and explain these recovery charges and fees. Consumer Protection and Safety Division, CPUC, White Paper On Wireless Service Quality, NARUC Annual Convention, Nov. 2003 (CPSD White Paper), at 5-7. According to CPSD's review of actual and sample monthly bills from several major wireless carriers, recovery charges are frequently billed in the "Taxes, Surcharges and Fees" section of bills and lead consumers to believe the fee is a tax and/or a government-mandated fee. CPSD White Paper at 7. Thus, NASUCA has painted an accurate picture of carriers' billing practices in its Petition: there is ample evidence of confusing and even abusive carrier practices regarding fees, surcharges and taxes on consumers' bills, both in California and on the national level.

III. CONCLUSION

The CPUC agrees with NASUCA that carriers' current billing practices regarding surcharges, taxes, and fees are unclear and confusing to consumers. To remedy this problem, the CPUC fully supports the use of regulation to ensure the accuracy and clarity of consumers' telecommunications bills, including the surcharges, taxes, and fees listed on those bills. By adopting a consumers' Bill of Rights and Consumer Protection Rules, the CPUC has taken action at the state level to protect consumers in this regard. The CPUC strongly encourages the Commission to do the same at the federal level.

Respectfully submitted,

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